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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,048	12/09/2003	Masahide Hoshino	242342US0DIV	2993
22850	7590	07/30/2008	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				YU, GINA C
ART UNIT		PAPER NUMBER		
		1617		
NOTIFICATION DATE			DELIVERY MODE	
07/30/2008			ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/730,048	HOSHINO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	GINA C. YU	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 4/21/2008.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 7,9,17-23,25-29 and 31 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 7 and 17-22 is/are allowed.

6) Claim(s) 9, 23, 25-29, 31 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. 10082115.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

Receipt is acknowledged of supplemental amendment filed on April 21, 2008.

The indicated allowability of claims 9, 23, 25-29, and 31 in the previous Office action dated November 30, 2007 is withdrawn in view of the reference(s) to Robbins et al. (US 4626429). Rejections based on the newly cited reference(s) follow.

The finality of Office action dated November 30, 2007 is hereby withdrawn.

### ***Allowable Subject Matter***

Claims 7, 17-22 are allowed.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

### **Claims 9, 23, 26, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robbins et al. (US 4626429).**

Robbins teaches a method of using polyamides which are useful to condition human hair having the formula shown in col. 6, lines 1-5, wherein A of the formula is alkyl of 1-20 carbon atoms or hydrogen, T is methyl or hydrogen, R is a neoalkyl of 4 to 13 carbon atoms, n is from 1-40. The polyamide meets the limitation of the present diamide when n=2 and T= H. The reference further teaches that "the present conditioning agents also are compatible with most cleaning agents employed in shampoo". The reference further teaches that the amides "can be incorporated in

shampoos and rinse preparations, which may contain such anionic materials", wherein the anionic materials are anionic detergents. See col. 8, lines 22 -30. The paragraph teaches that the amides do not interfere with the cleaning of the hair by shampoos based on anionic and nonionic detergents and do not form undesirable insoluble products by reaction with such detergents. See col. 9, line 61 – col. 10, line 9.

Although Robbins does not specifically disclose a composition comprising the polyamide with an anionic surfactant and a nonionic surfactant, it would have been obvious to one of ordinary skill in the art at the time of the present invention to make a shampoo comprising the hair conditioning amide of the prior art with anionic and nonionic detergents because the reference suggests making a shampoo product and also teaches that shampoo contains anionic and nonionic detergents. According to the teachings and suggestion of the prior art, the skilled artisan would have had a reasonable expectation of successfully producing a stable conditioning shampoo composition.

**Claims 25, 27-28, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robbins as applied to claims 9, 23, 26, 29 as discussed above, and further in view of Bratescu et al. (US 6306805 B1).**

Robbins fails to teach the amount of the surfactants and cationic surfactants.

Bratescu teaches a surfactant composition for shampoo, comprising a mixture of at least one cationic surfactant, at least one anionic surfactant, and a bridging surfactant such as a nonionic surfactant or semi-polar nonionic surfactant. See abstract. The reference teaches that the particular combination of the surfactants of the prior art

renders the anionic-cationic complex to remain relatively soluble in aqueous solutions without the use of solubilizing organic solvents or modification to the anionic or cationic surfactants while still providing improved performance (increased surface tension reduction, improved wetting times, increased foam volume and stability). See col. 5, line 32 – col. 6, line 6. The reference teaches the specific types and amount of surfactants suitable for use in shampoo formulations. See col. 6, line 7 – col. 7, line 10; col. 29, line 5 – col. 33, line 56. Adding an oil base to the final formulation would have been also obvious as the reference teaches adding silicones and oils and wax emollients. See col. 38, lines 38 – 50.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of Robbins by incorporating the surfactant mixture of Bratescu as the Bratescu reference teaches that the prior art combination of the surfactants provide a stable and water-soluble shampoo formulation with improved performance.

### ***Response to Arguments***

Applicant's arguments filed on April 21, 2008 have been fully considered but they are not persuasive.

Applicant asserts that it would not have been obvious to include either of an anionic surfactant or a nonionic surfactant in the present diamide containing composition of the prior art because the reference teaches that the neoalkyl diamide is "easily removed" by each of the surfactant. Examiner views that the reference rather teaches making a conditioning shampoo comprising the prior art amide rather than

teaching away from it, as discussed above in the rejection. Furthermore, the said easy removal of the diamide by shampooing the treated hair does not appear to be in and of itself a teaching away from incorporating the diamide to a shampoo. Thus the rejection is deemed proper.

***Conclusion***

Claims 7, 17-22 are allowed.

Claims 9, 23, 25-29, and 31 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/  
Primary Examiner, Art Unit 1617